

HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES

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# HOUSE RESEARCH ORGANIZATION

## ———— daily floor report ————

Monday, May 11, 2015  
84th Legislature, Number 67  
The House convenes at 10 a.m.  
Part One

Eighty-two bills are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.



Alma Allen  
Chairman  
84(R) - 67

## HOUSE RESEARCH ORGANIZATION

### Daily Floor Report

Monday, May 11, 2015

84th Legislature, Number 67

#### Part 1

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**SUBJECT:** Authorizing a disease control pilot program in certain counties

**COMMITTEE:** County Affairs — committee substitute recommended

**VOTE:** 9 ayes — Coleman, Farias, Burrows, Romero, Schubert, Spitzer, Stickland, Tinderholt, Wu

0 nays

**WITNESSES:** For — Neel Lane, National Harm Reduction Coalition; William Martin, Rice University James A. Baker III Institute for Public Policy; Jill Rips, San Antonio AIDS Foundation; Donald Lee, Texas Conference of Urban Counties; Joe McAdams, Texas HIV Connection; Melissa Lujan, The Center for Health Care Services and Centro de Vida Empowerment Project; Jason Bowling, University Health System; (*Registered, but did not testify:* Matt Simpson, American Civil Liberties Union of Texas; Seth Mitchell, Bexar County Commissioners Court; Katharine Ligon, Center for Public Policy Priorities; Robin Peyson, Communities for Recovery; Jim Allison, County Judges and Commissioners Association of Texas; Lucinda Saxon, Legacy Community Health Services; Cate Graziani, Mental Health America of Texas; Maureen Milligan, Teaching Hospitals of Texas; Scott Henson, Texas Criminal Justice Coalition; Jennifer Banda, Texas Hospital Association; Dan Finch, Texas Medical Association; Conrad John, Travis County Commissioners Court)

Against — None

On — Jenny McFarlane, Texas Department of State Health Services

**BACKGROUND:** Government Code, sec. 531.0972 authorizes the Health and Human Services Commission to consult with the local health authority of Bexar County to establish a pilot program to prevent the spread of certain communicable diseases, including a disease control program providing for the anonymous exchange of used hypodermic needles and syringes.

Health and Safety Code, ch. 481 is the Texas Controlled Substances Act.

Sec. 481.125 prohibits the possession of drug paraphernalia, including a hypodermic syringe or needle, for the use of illegal substances, as well as the delivery of drug paraphernalia with the knowledge that the person receiving it will use it for illegal purposes.

**DIGEST:**

CSHB 65 would allow certain counties and hospital districts to authorize a disease control pilot program that included a hypodermic needle exchange program, among other components. The bill would apply to Bexar, Dallas, El Paso, Harris, Nueces, Travis, and Webb counties and hospital districts in those counties. The Health and Human Services Commission could provide guidance to these entities in establishing a disease control pilot program.

**Disease control pilot program.** Under the bill, a county or hospital district could authorize an organization to establish a pilot program designed to prevent the spread of HIV, hepatitis B, hepatitis C, and other communicable diseases. The program could include disease control outreach programs that:

- provided for the anonymous exchange of used hypodermic needles and syringes for an equal number of new hypodermic needles and syringes;
- offered education on the transmission and prevention of communicable diseases; and
- helped participants receive health care and related services, including mental health and substance abuse treatment services and bloodborne disease testing.

A licensed wholesale drug or device distributor could distribute hypodermic needles and syringes to a disease control pilot program. The county or hospital district could require the organization operating the program to register with the county or district and pay a reasonable fee to distribute hypodermic needles and syringes under the pilot program. The organization, in turn, could charge a fee to a program participant for each needle or syringe used in the program. Counties or hospital districts would use fee money to help pay for oversight functions, including coordination with law enforcement.

The bill would require safe and proper storage and disposal of needles and syringes, and access to them would be restricted to authorized employees or volunteers of the disease control program. Program participants would have access to hypodermic needles and syringes through packaged safe kits distributed through the program.

**Exception to prosecution.** Beginning September 1, 2015, the bill would provide exceptions to prosecution for offenses related to drug paraphernalia under the Texas Controlled Substances Act for a person involved with the disease control pilot program who:

- dispensed or delivered a hypodermic needle and syringe for a medical purpose, including a needle exchange program;
- manufactured hypodermic needles and syringes for delivery to the program; or
- was an employee, volunteer, authorized agent, or participant and used, possessed, or delivered a hypodermic needle and syringe as a part of the program.

**Other provisions.** An organization operating the disease control pilot program would be required annually to provide to the Department of State Health Services and the authorizing county or hospital district information on the effectiveness and impact of the program in reducing the spread of communicable diseases.

The organization could solicit and accept gifts, grants, or donations to fund the program. Statutory authorization for the pilot programs would expire September 1, 2025.

This bill would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

CSHB 65 is a local authority bill that would give certain counties and hospital districts an effective way to provide counseling and health services to populations that often do not seek these services for fear of prosecution. Studies have shown that drug use actually decreases with the introduction of needle-exchange programs into communities. These programs offer more than clean needles — participants gain access to other mental and physical health care services, including substance abuse

treatment. While there is no guarantee a participant would enter a substance abuse program, needle exchange programs in other cities, such as Baltimore, have seen almost 20 percent of participants enter treatment after the program was established.

Counties and hospital districts would not be required to establish a program, and no state funds would be used to operate one. The bill would allow a disease control program to accept gifts, donations, and grants, and the county or hospital district could charge a fee to program participants to help offset program costs.

Rates of HIV and hepatitis C increase significantly when intravenous drug users share needles. Needle-exchange programs limit the instances in which people are exposed to used syringes, reducing the transmission of HIV and other bloodborne diseases. Texas has one of the highest HIV/AIDS rates in the country, and the lifetime cost of treating an HIV-positive person can range from \$385,000 to \$600,000. As a result of the state's high rate of uninsured residents, this cost frequently falls on county hospitals and taxpayers. Prevention of HIV through a needle-exchange program would be significantly less expensive and would save the county and taxpayers thousands of dollars.

This bill also would benefit individuals who come into contact with intravenous drug users. Law enforcement and health care workers are also at risk of being infected by contaminated needles hidden by drug users. This bill would decrease this risk by supplying safely packaged and clean needles.

**OPPONENTS  
SAY:**

This bill could send a message that the Legislature condones risky and illegal activity by providing a tool for illegal drug use and allowing counties to use local tax dollars to enable drug abusers. The state should not support or encourage this activity, let alone contribute to the supply of equipment required for substance abuse. Instead, the state should focus its efforts on supporting programs that help people recover and abstain from drugs altogether.

While these needle-exchange programs may also offer services designed to help addicts recover, there is no guarantee that drug users would

actually take advantage of them. An individual might participate only to receive a syringe package and not to benefit from any of the other services provided by the program. This bill could be a vehicle for individuals with substance abuse issues to receive a steady supply of drug paraphernalia, further enabling their addiction.

**SUBJECT:** Limiting political subdivisions' ability to issue capital appreciation bonds

**COMMITTEE:** Investments and Financial Services — committee substitute recommended

**VOTE:** 6 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Stephenson  
0 nays  
1 absent — Pickett

**WITNESSES:** *Subcommittee on Bond Indebtedness:*  
For — Peggy Venable, Americans for Prosperity; James Quintero, Texas Public Policy Foundation; Cobby Caputo (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas)  
  
Against — None  
  
On — Johnny Hill, Fast Growth Schools Coalition; Keith Bryant, Lubbock-Cooper ISD, Fast Growth Schools Coalition; Rogelio Rodriguez, the Finance Industry; (*Registered, but did not testify*: James Hernandez, Harris County, Harris County Toll Road Authority)

**BACKGROUND:** Capital appreciation bonds are a form of bond that does not pay interest until its maturity date. Because political subdivisions are not required to pay out monthly or quarterly interest payments, capital appreciation bonds sometimes are used to raise funds when a political subdivision could not otherwise afford to issue bonds. Some school districts issue capital appreciation bonds when they are near the state-mandated limit for how much tax revenue may be spent for bond maintenance.

**DIGEST:** CSHB 114 would place certain limitations and requirements on political subdivisions that issued capital appreciation bonds. The bill would limit the amount of capital appreciation bonds a political subdivision could issue to no more than 25 percent of the subdivision's total bond indebtedness at the time of issuance. To determine its total amount of bond indebtedness, the political subdivision would be required to include the amount of principal and interest that must be paid on outstanding

bonds until maturity.

Political subdivisions would be prohibited from issuing capital appreciation bonds that were secured by ad valorem taxes unless:

- the bonds had a scheduled maturity date of not more than 25 years after the date of issuance;
- the governing body of a political subdivision had received a written estimate of the projected tax impact of the bond;
- the governing body had received a written estimate of the amount in principal, interest, and fees to be paid before maturity;
- the governing body had determined in writing whether any personal or financial relationship existed between any governing members of the political subdivision and professionals associated with the bond issuance; and
- the governing body had displayed on its website the amount of the proposed bond, the length of maturity, projects to be financed with the bond, and other pertinent information.

These restrictions would not apply to the issuance of refunding bonds under Government Code, ch. 1207 or capital appreciation bonds issued for transportation projects.

Political subdivisions would be prohibited from using capital appreciation bonds to purchase maintenance items or transportation-related items, such as buses. Political subdivisions could only spend any unused surplus on uses that had been identified on the bond's website. Unused bond proceeds could be spent for another use if the political subdivision first held a successful election to repurpose the bond proceeds.

Political subdivisions would be prohibited from extending the maturity date of an issued capital appreciation bond in most cases, including through the issuance of refunding bonds that extend the maturity date. A political subdivision would be able to extend the maturity date if the extension decreased the total amount of projected principal and interest that the subdivision would have to pay until maturity or if the political subdivision was a school district and the Texas Education Agency

certified that the solvency of the permanent school fund's bond guarantee program would be threatened without the extension.

The bill would take effect September 1, 2015, and would not affect the validity of capital appreciation bonds issued before that date.

**SUBJECT:** Designation of centers of excellence for fetal diagnosis and therapy

**COMMITTEE:** Public Health — committee substitute recommended

**VOTE:** 11 ayes — Crossover, Naishtat, Blanco, Coleman, Collier, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

**WITNESSES:** For — Cris Daskevich, Texas Children's Hospital; (*Registered, but did not testify*: Claire Bocchini and Judy Levison, Doctors for Change; Shannon Lucas, March of Dimes; Lauren Rose, Texans Care for Children; Rebekah Schroeder, Texas Children's Hospital; Jennifer Allmon, the Texas Catholic Conference of Bishops; Casey Smith, United Ways of Texas; Wilson Lam)

Against — None

On — Johnson Anthony, Kenneth Moise, and KuoJen Tsao, UTHealth School of Medicine, The Fetal Center at Children's Memorial Hermann Hospital

**BACKGROUND:** There are currently two fetal centers in Texas: the Fetal Center at Children's Memorial Hermann Hospital and the Texas Children's Fetal Center. These centers offer fetal diagnosis, fetal intervention, and comprehensive fetal care for babies with congenital anomalies or genetic abnormalities. Some have called for a qualified facility that is expanding and integrating an advanced fetal care program to be designated as a "center of excellence."

**DIGEST:** CSHB 2131 would require the Department of State Health Services (DSHS), in consultation with the Fetal Diagnosis and Therapy Advisory Council, to designate one or more health care entities in the state as centers of excellence for fetal diagnosis and therapy. To be eligible to receive the designation, a health care entity would have to provide comprehensive maternal, fetal, and neonatal health care for pregnant women with high-risk pregnancies complicated by one or more fetuses

with anomalies, genetic conditions, or compromise caused by a pregnancy condition or by exposure.

The advisory council would be appointed by the executive commissioner of the Health and Human Services Commission (HHSC) and would consist of individuals with expertise in fetal diagnosis and therapy. A majority of the members of the advisory council would have to practice in those areas in a health profession in the state. The advisory council could include national and international experts.

The executive commissioner of HHSC, in consultation with DSHS and the Fetal Diagnosis and Therapy Advisory Council, would adopt rules establishing the criteria necessary for a health care entity in the state to receive the designation as a center. The bill would specify which criteria the two bodies would prioritize in their rules when designating a health care entity as a center.

The bill also would require the executive commissioner and the advisory council to ensure that a designation as a center was based directly on a health care entity's ability to:

- achieve cost-effectiveness in health care treatment;
- implement and maintain a cohesive multidisciplinary structure for its health care team;
- meet acceptable thresholds of patient volume and physician experience;
- monitor short-term and long-term patient diagnostic and therapeutic outcomes; and
- provide to DSHS annual reports based on those outcomes and make those reports available to the public.

CSHB 2131 would require the executive commissioner to adopt the rules for designating a center by December 1, 2015. The Department of State Health Services would begin designating health care entities as centers of excellence for fetal diagnosis and therapy by September 1, 2016.

The bill would take effect September 1, 2015.

**SUBJECT:** Insurance requirements for transportation network company drivers

**COMMITTEE:** Insurance — committee substitute recommended

**VOTE:** 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman  
0 nays

**WITNESSES:** For — April Mims, Lyft; Joe Woods, Property Casualty Insurers Association of America; Brad Nail, Uber; (*Registered, but did not testify*: Thomas Ratliff, American Insurance Association; Tom Tagliabue, City of Corpus Christi; Frank Galitski, Farmers Insurance; Lee Loftis, Independent Insurance Agents of Texas; Anne O’Ryan, Interinsurance Exchange, Autoclub County Mutual, AAA Texas; Paul Martin, National Association of Mutual Insurance Companies; Theresa Elliott, Sentry Insurance; Bruce Scott, State Farm; Caroline Joiner, TechNet; Stephen Minick, Texas Association of Business; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Jeffrey Brooks, Texas Conservative Coalition; Kari King, USAA)  
  
Against — None  
  
On — Martyn Hill, Texas Taxi DBA Yellow Cab Austin, Houston, San Antonio, Galveston, Pasadena; Judy Kostura, Texas Trial Lawyers Association; (*Registered, but did not testify*: Debra Knight and Mark Worman, Texas Department of Insurance)

**BACKGROUND:** Insurance Code, Title 10, Subtitle C specifies requirements for automobile insurance. These include minimum liability coverage for all motorists. Transportation Code, ch. 601 describes the requirements of the Texas Motor Vehicle Safety Responsibility Act.  
  
The emergence of transportation network companies (TNCs) such as Uber and Lyft has exposed gaps in the automobile insurance policies available in Texas. Because personal insurance does not provide coverage for accidents that occur while a driver is transporting a passenger for money,

TNC drivers may find themselves without coverage in the event of an accident. Because TNC drivers typically transport passengers as a side job, commercial auto policies may be too expensive or inappropriate for these drivers.

**DIGEST:** CSHB 1733 would amend the Insurance Code to include provisions related to insurance for transportation network company (TNC) drivers. It would specify requirements for drivers while they were available to or driving for TNCs, provisions in the event coverage lapsed, the relationship between a TNC and a driver, and provisions for insurance companies that do business with TNC drivers.

**Insurance requirements.** The bill would require TNC drivers to carry primary automobile insurance that covered use of a vehicle while transporting TNC passengers for compensation. The insurance would have to be active while the driver was logged on to the TNC's digital network and while the driver was transporting a passenger. The driver, the TNC, or a combination of the two could subscribe to the insurance policy as long as the driver was covered.

When the driver was logged on to the TNC network, the driver would be required to carry coverage of \$50,000 for injury or death coverage for each person in an incident, \$100,000 for injury or death coverage per incident, and \$25,000 for property-damage coverage per incident.

When a driver was carrying a TNC passenger, the insurance coverage would be required to provide at minimum a total aggregate limit of liability of \$1 million for death, bodily injury, and property damage for each incident.

If a driver's insurance policy lapsed or was insufficient, the TNC would be required to provide the coverage, beginning with the first dollar of a claim against the driver. Coverage of a TNC's insurance would not be contingent on the driver's insurer initially denying a claim. The coverage required for TNC operation would be required to satisfy the requirements of the Texas Motor Vehicle Safety Responsibility Act. Drivers would have to carry proof of insurance and disclose at the time of an accident whether they were logged on to a TNC network or transporting a

passenger.

**Relationship between TNC and driver.** Before a driver could accept a ride, a TNC would be required to disclose to drivers in writing the provisions of the insurance policy provided by the TNC and that personal insurance might not cover incidents while the driver was accepting TNC passengers. The bill would establish that a TNC did not control, direct, or manage a vehicle or driver, except as agreed in a written contract.

**Provisions for insurance carriers.** Insurers would be able to exclude from coverage under a personal auto insurance policy any incidents that occurred while a driver was logged in to a TNC network or carrying a TNC passenger. This would apply to any coverage including liability, personal-injury coverage, uninsured motorist coverage, medical coverage, comprehensive damage coverage, or collision coverage. Insurers could provide coverage for drivers engaged in TNC activities, either by including it in the policy or in a rider. Insurers that excluded TNC activities would not have a duty to defend or indemnify a claim that arose from an excluded event. Insurers that defended or indemnified claims against a TNC would have a right of contribution against an insurer that provides personal coverage to the driver.

TNCs would be required to assist insurers in claim investigations. They would be required to provide the precise times that a driver logged in and out of the TNC network in the 12 hours before and after an accident and a clear description of the terms of the insurance carried by a driver.

The bill would take effect September 1, 2015.

**SUBJECT:** Payments for part-time day care services provided to foster children

**COMMITTEE:** Human Services — committee substitute recommended

**VOTE:** 8 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Spitzer  
0 nays  
1 absent — Price

**WITNESSES:** For — Katherine Barillas, One Voice Texas; Andrew Homer, Texas CASA; (*Registered, but did not testify:* Ashley Harris, Texans Care for Children; Melody Chatelle, United Ways of Texas)  
  
Against — None  
  
On — (*Registered, but did not testify:* Lisa Black and John Specia, Department of Family and Protective Services)

**BACKGROUND:** Family Code, sec. 264.124 governs day care for foster children.  
  
Currently, foster parents and others caring for foster children do not receive reimbursements for placement in part-time day care. This can force a foster child into full-time day care unnecessarily or prevent an otherwise willing caregiver from caring for a foster child due to the lack of financial assistance available.

**DIGEST:** CSHB 1268 would allow a foster parent, a relative, or a designated caregiver to receive monetary assistance for day care for a foster child regardless of the type of day care chosen or the number of hours the foster parent, relative, or designated caregiver worked each week. The assistance would be provided on receipt of verifications required in existing law.  
  
This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

NOTES: The Legislative Budget Board estimates the bill would have a negative impact of about \$16.4 million on general revenue related funds through fiscal 2016-17.

**SUBJECT:** Establishing the Texas Women Veterans Program

**COMMITTEE:** Defense and Veterans' Affairs — committee substitute recommended

**VOTE:** 7 ayes — S. King, Frank, Aycock, Blanco, Farias, Schaefer, Shaheen  
0 nays

**WITNESSES:** For — Monique Rodriguez, Grace After Fire; Juanelle Bradford, Detra Sneed, Pam Tilley, Valerie James, Texas Women Veterans; Adrienne Evans-Quickley, Acquanetta Pullins, Women's Army Corps Veteran's Association; Judith Dubose; (*Registered, but did not testify*: June Deadrick, CenterPoint Energy; Melissa Mckennon, Grace After Fire; Grace Davis, Hays Caldwell Council on Alcohol and Drug Abuse; Bill Kelly, Mental Health America of Greater Houston; David Swain; Laura Austin, Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Josette Saxton, Texans Care for Children; James Cunningham, Texas Coalition of Veterans Organizations and Texas Council of Chapters of the Military Officers Association of America; LaShondra Jones, Texas Criminal Justice Coalition; William West, The American Legion of Texas; Conrad John, Travis County Commissioners Court; Casey Smith, United Ways of Texas; Olie Pope, Veterans County Service Officers Association of Texas; Romana Harrison; Sheena Harsh)

Against — None

On — Edith Disler, Texas Veterans Commission

**BACKGROUND:** Government Code, ch. 434 tasks the Texas Veterans Commission with collecting information and informing members and veterans about available veteran services and facilities, cooperating with veteran service agencies in Texas, and assisting veterans in obtaining local, state, or federal benefits.

Several permanent programs are established under the commission, including education and entrepreneurship programs, but the Women Veterans Initiative is a temporary program. There are currently more than

190,000 women veterans in Texas, the fastest-growing veteran demographic in the state.

**DIGEST:**

CSHB 867 would establish the Texas Women Veterans Program in the Texas Veterans Commission. The program's stated mission would be to ensure that women veterans in Texas have equitable access to federal and state veterans' benefits and services.

The program would be attached to the office of the executive director for administrative purposes, and the bill would require the executive director to designate a women veterans coordinator for the state.

The duties of the program would include:

- providing assistance to women veterans in Texas;
- performing outreach to improve the awareness of women veterans of their eligibility for federal and state veterans' benefits and services, and public awareness about gender-specific needs;
- assessing the needs of women veterans for benefits and services;
- reviewing programs, research projects, and other initiatives designed to address the needs of women veterans in Texas;
- making recommendations to the executive director about improvement of benefits and services to women veterans;
- incorporating issues concerning women veterans in commission planning regarding veterans' benefits and services; and
- recommending legislative initiatives and development of policies on the local, state, and national levels to address issues affecting women veterans.

The bill would require the program to collaborate with federal, state, county, municipal, and private agencies that provide services to women veterans and share information with them regarding opportunities for women veterans. The bill also would require the program to work with these entities to create conferences, seminars, and training workshops to provide guidance and direction to women veterans who are applying for grants, benefits, or services.

The bill also would require the program to promote events and activities that recognize and honor women veterans and women who serve in the military and provide facilities in support of the program to the extent funding is available for facilities.

The bill would allow the commission to:

- accept and spend funds on behalf of the program that are either appropriated to the commission to operate the program or are received through other sources, including donations and grants;
- provide matching grants to assist in implementing the program's objectives; and
- participate in the establishment and operation of an affiliated nonprofit organization that raises money or provides services to a program established in the commission, including the Texas Women Veterans Program.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUBJECT:** Codifying the rule of lenity for statutes outside of Penal Code

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 5 ayes — Herrero, Canales, Hunter, Leach, Simpson

1 nay — Moody

1 absent — Shaheen

**WITNESSES:** For — Marc Levin, Texas Public Policy Foundation Center for Effective Justice; (*Registered, but did not testify*: Kristin Etter, Texas Criminal Defense Lawyers Association)

Against — None

On — (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

**DIGEST:** HB 1396 would add a section to the state's Code Construction Act in Government Code, ch. 311, stating that a statute or rule that created or defined a criminal offense, outside of those in the Penal Code, would have to be strictly construed against the government and construed in favor of the other party if any part of the statute or rule was susceptible to more than one objectively reasonable interpretation, including an element of the offense or a penalty.

The bill would take effect September 1, 2015, and would apply only to criminal proceedings that began on or after that date.

**SUPPORTERS SAY:** HB 1396 would formally codify the "rule of lenity" to ensure that Texas courts continued to follow it when considering criminal offenses outside of the Penal Code. While the rule is a fundamental tenet applied by courts to interpret statutes, its use in Texas has eroded, and it should be codified to ensure uniform, consistent application throughout the state.

The rule of lenity says that when courts are interpreting criminal statutes,

they should resolve questions about ambiguity in favor of the defendant. The U.S. Supreme Court described the rule in one of its opinions by saying that under the rule, a tie goes to the defendant. In the 2008 opinion *United States v. Santos*, the court stated, “Under a long line of our decisions, the tie must go to the defendant. The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them.”

The rule of lenity has been a cannon of courts for hundreds of years and is consistent with the idea that individuals must have fair notice of what is a crime. This is especially important when deciding cases that carry potential criminal sanctions. While the Penal Code generally is clear with well-defined language, and the rule of lenity is applied to Penal Code offenses, this is not always the case for other offenses. The application of the rule to the numerous crimes outside of the Penal Code, many of which are regulatory in nature, has eroded. In some cases, courts do not give the benefit to the accused if a law is ambiguous but instead give it to the government.

HB 1396 would address this issue of the erosion of the rule's use of lenity by formally codifying the rule for offenses outside of the Penal Code. This would plainly express the rule, emphasize its importance, and act as a reminder to courts and prosecutors working outside of the Penal Code that the rule should be applied.

As under current law, if application of the rule of lenity resulted in outcomes counter to the intention of the law, the Legislature could resolve the issue by revising the law so that its meaning was clear.

OPPONENTS  
SAY:

Codifying the rule of lenity is unnecessary because, as a cannon of legal interpretation, it already is used by courts. Use of the rule as an uncoded tenet should continue to be left to the judiciary as it has been for hundreds of years.

Placing the rule in statute could make it appear to be a directive to the judiciary considering cases outside of the Penal Code, instead of having its place as one of the other principles commonly used by courts. Being in statute could appear to elevate the rule over other principles used by

courts, including considering laws in the context of the Code Construction Act and looking at the language, legislative history, and structure of a law. This could confuse courts as to how it should be weighed, something that could work to the benefit of those such as white collar criminals whose crimes might fall outside of the Penal Code.

**SUBJECT:** Interventions and sanctions for academically unsuccessful schools

**COMMITTEE:** Public Education — committee substitute recommended

**VOTE:** 11 ayes — Aycock, Allen, Bohac, Deshotel, Dutton, Farney, Galindo, González, Huberty, K. King, VanDeaver

0 nays

**WITNESSES:** For — David Anthony, Raise Your Hand Texas; Monty Exter, The Association of Texas Professional Educators; (*Registered, but did not testify*: Sandy Ward and Angela Smith, Fredericksburg Tea Party; Drew Scheberle, Greater Austin Chamber of Commerce; Barbara Frandsen, League of Women Voters of Texas; Ted Melina Raab, Texas American Federation of Teachers; Lindsay Gustafson, Texas Classroom Teachers Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Yannis Banks, Texas NAACP; Matt Long)

Against — None

On — Mark Baxter, Texas Education Agency; Julie Linn, Texans for Education Reform; Grover Campbell, Texas Association of School Boards; (*Registered, but did not testify*: Von Byer and Ronald Rowell, Texas Education Agency; Steve Swanson)

**BACKGROUND:** Education Code, sec. 39.106 establishes a campus intervention team to work with certain low-performing schools. Local education agencies recommend team members, according to procedures established by the Texas Education Agency (TEA). The team assigned to a campus consists of the district coordinator of school improvement and a professional service provider, such as a former principal, superintendent, or other experienced educator.

Sec. 39.107 contains procedures for campuses identified as unacceptable for two consecutive school years. The procedures include reconstitutions, repurposing, alternative management, and closure.

**DIGEST:** CSHB 1842 would adopt new procedures for intervening in and sanctioning certain low-performing schools, including requirements for a campus turnaround plan.

**Campus turnaround plan.** After a campus has been identified as unacceptable for two consecutive years, the commissioner of education would order the campus to submit a campus turnaround plan. The district board of trustees would consult with the campus intervention team to provide notice and request assistance from parents, the community, and stakeholders. The plan would have to include details on the method for restructuring, reforming, or reconstituting the campus. The plan could involve granting a district charter.

The bill would remove requirements that a campus intervention team decide which educators at the underperforming school should be retained and the prohibition on retaining the principal unless certain conditions were met.

The turnaround plan would have to include:

- a detailed description of academic programs, including instructional methods, length of school day and year, credit and promotion criteria, and programs to serve special student populations;
- the term of a district charter, if applicable, which could not exceed five years;
- written comments from stakeholders, including parents and teachers; and
- a detailed description of the budget, staffing, and financial resources required to implement the plan.

**Open-enrollment charter schools.** The bill would require an open-enrollment charter school to revise the school's charter in a campus turnaround plan.

The education commissioner must approve a campus turnaround plan after determining that it would satisfy all student performance standards not later than the second year following its implementation.

A turnaround plan would be implemented following the third consecutive school year that the campus has been rated academically unacceptable. A district could modify or withdraw the plan if the campus is rated academically acceptable for two years.

**Alternative management.** If a campus turnaround plan is not approved, the commissioner would be required to order appointment of a board of managers to govern the district, alternative management of the campus, or closure.

If the commissioner orders alternative management, the district would be required to execute a contract with a managing entity for up to five years. The contract would have to be approved by the commissioner and would be canceled if a campus continued to be rated academically unacceptable for two consecutive years. When a contract was ended, the school board would resume management of the campus.

**Board of managers.** If a campus were rated unacceptable for three consecutive years after being ordered to submit a turnaround plan, the commissioner would either appoint a board of managers to govern the district or close the school.

A board of managers would be required to take appropriate actions to resolve the conditions that caused a campus to be low performing, including amending the district's budget, reassigning staff, or relocating academic programs. The commissioner could authorize payment to a board of managers from TEA funds. A board of managers could be removed only after the campus received an academically acceptable rating for two consecutive years. After removal of a board of managers, the commissioner could appoint a conservator to ensure district-level support for low-performing campuses.

**Closure.** Under an order of closure, a campus could be repurposed only if the commissioner found a repurposed campus would offer a distinctly different academic program and would serve a majority of grade levels at the repurposed campus not served at the original campus.

Any student assigned to a campus that had been closed would have to be allowed to transfer to any other campus in the district and be provided transportation to the other campus on request.

The Legislative Budget Board would be required to publish by December 1, 2018, a report evaluating the new procedures.

The commissioner would be required to adopt a transition plan to allow a campus that received an academically unacceptable rating for three or more consecutive years before the bill went into effect to continue with existing interventions and sanctions. If such a campus continued to receive the low ratings for two more school years it would be closed or a board of managers would be appointed for the district.

The bill would apply beginning with the 2016-17 school year. For a campus that receives an academically unacceptable rating for a consecutive year following the 2015-16 school year, the act would apply beginning with the 2016-17 school year.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

CSHB 1842 would address chronically low performing schools by streamlining the sanctions and intervention process and providing finality for the community. Districts and local school boards no longer could allow low-performing campuses to persist for years. The knowledge that the state would intervene could force a school board to either fix the campus or give students a better option.

**Campus turnaround plan.** The bill would direct a school rated academically unacceptable for two consecutive years to develop a campus turnaround plan to be implemented if the campus received a third academically unacceptable rating. Districts would have flexibility to craft a plan that met local needs and included input from parents and teachers.

The bill would remove requirements that could lead to wholesale replacements of teachers at failing schools. Instead of punishing teachers

for working in a troubled school, the bill would allow them to play a crucial role in turning the campus around.

**Alternative management.** The requirement for alternative management contracts to be revoked after two years if a school did not improve would prevent a campus from being allowed to remain unacceptable for longer than that just because there was an alternative management contract in effect. Some have suggested the bill should give the commissioner authority to establish a statewide “opportunity” or “achievement” school district. The bill would give the commissioner sufficient authority to alternatively manage schools without the need to establish an opportunity school district.

After five consecutive years of academically unacceptable performance, the bill would require closure or a board of managers. These are drastic, but appropriate options for schools with a long record of consistently low performance.

OPPONENTS  
SAY:

CSHB 1842 would spend \$1.7 million on state-level staff to address failing schools instead of funding programs to directly help students in those schools succeed. Money for tutoring, technology, and counseling could do more to improve student performance than yet another series of bureaucratic interventions and sanctions.

The bill would not give sufficient time for alternate management arrangements to work. Some entities that specialize in school interventions have said they would need a minimum of five years to turn around a failing school. A statewide “opportunity” school district should be included among the alternative management options because other states have used them effectively to boost student achievement.

The bill should address the situation where a campus moves from unacceptable to acceptable and back again. Those districts that fall back below acceptable standards should not be allowed to reset the timeline for intervention and sanctions.

NOTES:

The Legislative Budget Board estimates that CSHB 1842 would result in a negative impact of \$1.7 million on general revenue related funds through

fiscal 2016-17.

**SUBJECT:** Creating a program to advance research on adult stem cells

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 11 ayes — Cook, Giddings, Craddick, Farney, Farrar, Geren, Harless, Kuempel, Oliveira, Smithee, Sylvester Turner

0 nays

1 absent — Huberty

**WITNESSES:** For — Rick Hardcastle; (*Registered, but did not testify:* Ann Hettinger, Concerned Women for America of Texas; Joe Pojman, Texas Alliance for Life; Jennifer Allmon, the Texas Catholic Conference of Bishops; Stephen (Jay) Maguire; Krista Olson; Kym Olson)

Against — None

On — David Bales, Texans for Stem Cell Research

**BACKGROUND:** Adult stem cells, which have been identified in many organs and tissues, are a promising medical therapy for certain degenerative diseases, birth defects, spinal cord injuries, and other medical conditions. These types of stem cells are not derived from embryos.

Research on adult stem cells already is being conducted across the state at universities and other institutions. Support and coordination from a state entity could further facilitate the progress of this research.

**DIGEST:** CSHB 177 would add a new chapter to the Education Code that would create an adult stem cell research program. The bill would create an Adult Stem Cell Research Consortium and an Adult Stem Cell Research Coordinating Board to carry out and coordinate the research.

The consortium established by the bill would be composed of participating institutions of higher education and businesses that accepted money for adult stem cell research or otherwise agreed to participate.

The seven-member Adult Stem Cell Research Coordinating Board would be charged with administering a program to make grants and loans to consortium members for certain activities, including:

- projects to develop therapies, protocols, or medical procedures involving adult stem cells;
- development of facilities to be used solely for stem cell research projects; and
- commercialization of products and technology involving adult stem cell research and treatments.

The bill also would require the board to support consortium members in all stages of the process of developing treatments and cures based on adult stem cell research, from initial laboratory research through clinical trials. The board would establish appropriate regulatory standards and oversight bodies and would provide assistance to consortium members in applying for grants or loans under the program. In addition, the board would develop priorities, guidelines, and procedures for the provision of grants and loans, including requirements that grants and loans be made on a competitive, peer-review basis.

The bill would specify the composition of the coordinating board and the terms of the board members. It also would stipulate that certain persons could not be members of the board due to conflicts of interest.

CSHB 177 would require that the research program be funded through gifts, grants, and donations to be solicited by the consortium and accepted by the board on the consortium's behalf. The program could not be funded by legislative appropriations.

By September 1 of each even-numbered year, the research coordinating board would be required to submit a report of its activities and recommendations to the Texas Higher Education Coordinating Board, the governor, the lieutenant governor, the speaker of the House of Representatives, and the presiding officers of legislative committees with jurisdiction over higher education.

CSHB 177 would specify requirements and limitations for the collection of adult stem cells and for their use in health care and hospital settings.

The bill would take effect September 1, 2015.

SUBJECT: Allowing three-judge panels for certain important statewide suits

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Smithee, Clardy, Laubenberg, Schofield, Sheets  
4 nays — Farrar, Hernandez, Raymond, S. Thompson

WITNESSES: For — Jonathan Mitchell; (*Registered, but did not testify*: Mike Hull, Texans for Lawsuit Reform)  
  
Against — Bryan Blevins and Nelson Roach, Texas Trial Lawyers Association; Dan Foster; (*Registered, but did not testify*: Celina Moreno, MALDEF; Jason Byrd, Texas Association of Consumer Lawyers; David Chamberlain, Texas Chapters of the American Board of Trial Advocates; Steve Bresnen, Texas Family Law Foundation)  
  
On — Jim Davis, Office of the Attorney General; Michele Smith, Texas Association of Defense Counsel

BACKGROUND: Under 28 U.S.C., sec. 2284, a three-judge court hears any action challenging the apportionment of congressional districts and state legislative bodies.

DIGEST: CSHB 1091 would allow the attorney general to petition the chief justice of the Texas Supreme Court to convene a special three-judge district court in certain suits filed in state district courts in which the state was a defendant.

**Mandatory proceedings.** If the claim affected school finance or involved redistricting for the House of Representatives, Senate, State Board of Education, U.S. Congress, or state judicial districts, the chief justice would be required to grant the petition within a reasonable time and issue an order transferring the court to a special three-judge district court.

**Discretionary Proceedings.** Under the bill, the attorney general also could petition for a three-judge district court in a district court suit in

which the state was a defendant if the attorney general certified that the claim:

- could significantly impact the state's finances;
- could significantly alter the operations of important statewide policies or programs; or
- was of such exceptional statewide importance that the claim should not be decided by one district judge.

The chief justice could request a party to file a statement objecting to or supporting the attorney general's petition. A party could not file a statement unless the chief justice requested one. The chief justice also could deny petition or grant it and issue an order transferring the court to a special three-judge district court. The chief justice could consider whether the petition satisfied the jurisdictional requirements and whether the resources available in the state's court system allowed the claim to be heard by a three-judge district court, but could not express opinions on any questions of law in the underlying case.

**Stay of proceedings.** A petition under both the mandatory and discretionary provisions of this bill would stay all proceedings in district court until the chief justice acted on the petition.

**Special three-judge district court.** If the chief justice granted either a discretionary or mandatory petition, the chief justice would appoint three judges to serve on the special three-judge district court. The court would consist of:

- the district judge in the original case;
- a district judge of another judicial district in a county other than where the original case was filed; and
- a justice of a court of appeals from an appeals district that did not cover the districts of the other two judges.

Judges or justices appointed to the court could only be elected to office and could not be serving an appointed term.

The three-judge district court would conduct all hearings in the original district court and could use all its facilities and administrative support. Travel expenses and incidental costs of the judges and justices would be paid by the Office of Court Administration of the Texas Judicial System.

**Consolidation of related actions.** Under the bill, a three-judge district court would be required, on motion of any party, to consolidate any related case pending in any district court or other court in the state. A consolidated case would be transferred to the three-judge district court if the court found that transfer was necessary. The transfer could occur without consent of the parties to the related case.

**Rules applicable to proceedings.** The Supreme Court could adopt rules for the operation and procedures of a special three-judge district court. Otherwise, the Texas Rules of Civil Procedure and all other statutes and rules applicable to civil litigation in a district court would apply.

**Actions by a judge or justice.** The judges of a three-judge district court could unanimously decide to allow one judge or justice to independently conduct pretrial proceedings and enter interlocutory orders before trial. A judge or justice could not independently enter a temporary restraining order, temporary injunction, or any order that finally disposed a claim before the court. Any independent action by a judge or justice could be reviewed by the entire court at any time before final judgment.

**Appeal.** Under the bill, appeals from interlocutory orders or final judgments of special three-judge district courts would go to the Supreme Court. The Supreme Court could adopt rules for these appeals.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

CSHB 1091 would help ensure that voters across the state had a say in the judges who heard major civil cases in which the state was a defendant. Major litigation about important state programs or state finances affects all Texans equally. However, under current law all of these cases are heard in a single district court, and only the residents of that county get to

vote on the judges who decide these cases. Current law disenfranchises voters of the other 253 counties in this state, and this bill would ensure that those voters had a voice.

This bill is patterned after the three-judge federal courts that are currently used to decide redistricting cases on a federal level. Those courts have been able to deal with evidentiary rulings and jury cases without any problems. The special three-judge courts established by the bill would work similarly and would be more responsive to the people because state district court judges and appellate court justices are directly elected.

The criteria for discretionary proceedings would ensure that only major state cases were decided by a three-judge district court.

OPPONENTS  
SAY:

CSHB 1091 would give too much authority to the attorney general and would allow the attorney general to use a petition for a three-judge district court as a tactic to adversely impact opposing parties. Under the federal statute, district judges have ministerial duties to notify circuit courts when a redistricting case comes before them. Here, however, the attorney general would have broad authority to petition the chief justice.

There also would be no limit on when the attorney general could file the petition, so the attorney general could file a petition at any time during trial to stay the proceedings for no other reason than as a delaying tactic.

The proposed discretionary proceedings provision is too broad and could lead to use of three-judge district courts in any number of cases where the state was a defendant including tort claims, eminent domain cases, contract actions and administrative appeals of decisions by licensing agencies.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would cost \$59,000 in general revenue in fiscal 2016-17 due to judges' travel costs and incidental expenses.

**SUBJECT:** Establishing the grocery access investment fund program

**COMMITTEE:** Economic and Small Business Development — committee substitute recommended

**VOTE:** 6 ayes — Johnson, Faircloth, Isaac, E. Rodriguez, Villalba, Vo

2 nays — C. Anderson, Metcalf

1 present not voting — Button

**WITNESSES:** For —Tania Noelle Boughton, American Heart Association; Jenny Eyer, Children at Risk; Stephen Costello, City of Houston; Amber Cooney, Peoplefund; Charles O’Neal, Texas Association of African American Chambers of Commerce; Daniel Gillotte, Wheatsville Food Co-Op; Lance Gilliam; (*Registered, but did not testify*: Savonne Caughey, American Heart Association; Dana Harris, Austin Chamber of Commerce; Kathryn Freeman, Christian Life Commission; Tim Schauer, Healthy Living Matters; Lauren Dimitry, Partnership for a Healthy Texas, Texans Care for Children, Texas Action for Healthy Kids; Lisa Hughes, Texas Academy of Nutrition and Dietetics; Yannis Banks, Texas NAACP; Clayton Travis, Texas Pediatric Society; Ellen Arnold, Texas PTA; Joel Romo, Texas Public Health Coalition; Casey Smith, United Ways of Texas)

Against — Ronnie Volkening, Texas Retailers Association

On — Deanna Hoelscher, University of Texas School of Public Health; (*Registered, but did not testify*: Neal Carlton, Dan Hunter, and Karen Reichek, Texas Department of Agriculture)

**BACKGROUND:** More than 14 percent of Texans live in areas that have been identified by the U.S. Department of Agriculture as presenting residents with difficulty in buying fresh food. Lack of access to grocery stores is believed to lead to a reliance on less healthy foods and ultimately to chronic illnesses and obesity. It also can hinder economic development in rural and urban areas.

**DIGEST:** CSHB 1485 would establish the grocery access investment fund to provide financing to construct, rehabilitate, or expand certain grocery stores in underserved areas. The program would be a private-public collaboration between the Texas Department of Agriculture and at least one nonprofit organization or community development financial institution. The program would provide grants or forgivable loans to private or public organizations to build, improve, or expand grocery stores in neighborhoods with little or no access to fresh produce or healthy food.

**Grocery access investment fund.** The Department of Agriculture would administer a trust fund outside the treasury composed of appropriations, grants, loans, tax credits or any other type of financial assistance from the state, the federal government, or private organizations. The program would be required to use at least 25 percent of the fund to administer grants and forgivable loans under the program. The program could not spend more than 10 percent of the fund for administrative or operational costs.

The department would provide grants or forgivable loans to support projects in areas that had been identified as an underserved area by a government agency or philanthropic healthy food initiative.

The department would be required to create project eligibility guidelines and provide financing through an application process. An applicant for financing could be a for-profit or nonprofit entity. The department would be required to consider the level of need in the project's surrounding area and the amount of public funding that would be needed to make the project move forward, create an impact, or be competitive. The department also would be required to consider whether the project would participate in state and local initiatives to educate consumers on nutrition.

The bill would require the department to establish monitoring and accountability mechanisms for projects that received financing and then use the information gathered to create an annual report for the Legislature.

To apply for financing, an applicant would be required to demonstrate a capacity to successfully implement an economically self-sustaining project that could repay any loan it received. An applicant who received

financing would be allowed to use funds received to purchase a site, build and equip a store, and train employees and for associated other start-up costs.

For at least five years after receiving a grant or forgivable loan, the applicant would be required to accept food stamps or benefits under the federal WIC program and promote the sale of fresh Texas-raised meat and produce grown in the state. In the same five-year period, the applicant also would be required to hire local residents and comply with all data collection and reporting requirements established by the department.

**Private-public partnership.** The program would be administered by the department in cooperation with one or more nonprofit organizations or community development financial institutions. A nonprofit organization or community development financial institution that partnered with the department would be required to:

- establish program guidelines;
- raise matching funds for projects;
- promote the program statewide;
- evaluate applicants;
- underwrite and disburse grants and loans;
- monitor applicant's compliance with the program; and
- monitor the economic impact of the program.

CSHB 1485 would require the department to adopt rules to administer the program by December 1, and to contract with one or more nonprofit organizations or community development financial institutions by December 15, 2015. The bill would require the department to transfer money to the fund by January 15, 2016.

The bill would take effect September 1, 2015.

**NOTES:**

The Legislative Budget Board estimates that CSHB 1485 would have a negative fiscal impact of \$10 million on general revenue related funds in fiscal 2016-17.

SUBJECT: Modifying conditions for settlement agreements with a governmental unit

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond,  
Schofield, Sheets, S. Thompson

0 nays

WITNESSES: For — (*Registered, but did not testify*: Michael Schneider, Texas  
Association of Broadcasters; Donnis Baggett, Texas Press Association)

Against — Donald Lee, Texas Conference of Urban Counties;  
(*Registered, but did not testify*: Seth Mitchell, Bexar County  
Commissioners Court; Donna Warndof, Harris County; Mark Mendez,  
Tarrant County Commissioners Court; Rick Thompson, Texas  
Association of Counties; John Dahill, Texas Conference of Urban  
Counties; Heather Mahurin, Texas Municipal League)

On — (*Registered, but did not testify*: Shelley Dahlberg, Office of the  
Attorney General)

DIGEST: HB 1630 would prohibit a state or local governmental unit from requiring  
individuals who file claims against the governmental unit to sign  
nondisclosure agreements when settling claims greater than or equal to  
\$30,000. The governmental unit could not disclose the personal  
information of a party seeking affirmative relief unless the party agreed to  
the disclosure.

Under the bill, if a governmental unit required a nondisclosure agreement  
as part of a settlement, the settlement would be void and unenforceable.

The bill would not affect information that was privileged or confidential  
under other law.

This bill would take effect September 1, 2015, and would apply to  
settlements of claims or actions that accrued on or after that date.

**SUPPORTERS  
SAY:**

HB 1630 would help ensure transparency and stop state and local governments from withholding valuable information from the public when using taxpayer dollars to settle court cases.

Nondisclosure agreements can allow governmental units to hide their wrongdoings from the public, which has a right to learn about government misconduct. Preventing taxpayers from learning the details surrounding a settlement makes it more difficult for the taxpayers to monitor the spending of state and local governments.

**OPPONENTS  
SAY:**

HB 1630 could adversely affect counties. Counties generally have individually elected officials who get sued and settle claims out of the county treasury. Officials frequently refuse to settle these claims unless they can prevent the claimants from continuing to make disparaging remarks in public. For this reason, counties often require nondisclosure agreements to settle cases, even if they are not concerned about criticism.

Allowing nondisclosure agreements would not limit the ability of the public to discover the facts surrounding settlements because individuals are not restricted from publicizing the facts of the case during every stage of litigation up to settlement.

SUBJECT: Enhancing penalties for certain assaults on sports participants

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Moody, Hunter, Leach, Shaheen, Simpson  
0 nays  
1 absent — Canales

WITNESSES: For — Michael Fitch, Texas Association of Sports Officials  
Against — None

BACKGROUND: Under Penal Code, sec. 22.01 a person commits assault if the person:

- intentionally, knowingly, or recklessly causes bodily injury to another;
- intentionally or knowingly threatens another with imminent bodily injury; or
- intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Under sec. 22.01, an assault that causes bodily injury is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), with certain exceptions. An assault that does not cause bodily injury is a class C misdemeanor (maximum fine of \$500) with certain exceptions, including that if the offense is committed by someone who is not a sports participant against a sports participant, it is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Sec. 22.01 defines sports participant as a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator or staff member.

**DIGEST:** HB 1829 would enhance the penalty for a person, other than a sports participant who was an athlete younger than 19 years old, who committed an assault that did not cause bodily injury against a person whom the actor knew was a sports participant to a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

This bill would take effect September 1, 2015, and would apply to offenses committed on or after that date.

**SUPPORTERS SAY:** HB 1829 would help ensure that participants in sporting events who committed assault were held accountable for their offenses. Under current law, non-participants who commit assault against a sports participant commit a class B misdemeanor, whereas participants who commit assault on a sports participant commit a class C misdemeanor. This disparity holds spectators to a higher standard than those who are participating in the sporting event.

This bill would fix the disparity and enhance the penalty for both participants and non-participants to a class A misdemeanor. Enhancing the penalties for assault on a sports participant would protect participants from violent acts and send a clear message that violent outbursts have no place in organized sports.

When the specific offense category for assaults against participants was added to the Penal Code, participants were excluded from the enhanced penalties to protect student athletes from receiving criminal penalties for incidents that occurred during the heat of competition. By excluding athlete participants younger than 19 years old from the enhancement, this bill would accomplish that goal, while still providing adequate punishment for other participants.

**OPPONENTS SAY:** Current law adequately punishes violent acts that occur during athletic competition, and HB 1829 would harshly punish activities that are generally not considered criminal. Under current law, offenses of assault in which the actor actually injures another person are already punishable as class A misdemeanors. The offense is increased to aggravated assault, which is a second-degree felony (two to 20 years in prison and an optional

fine of up to \$10,000) if the other person suffers serious bodily harm. These penalties are sufficient to adequately punish the most serious offenses of violence at sporting events.

The offenses covered under this bill could potentially include actions such as getting in a referee's face after a bad call or shoving another player after a contested play. Although these actions certainly should not be condoned, they also should not be punished as class A misdemeanors.

SUBJECT: Providing requirements for cash transactions in metal recycling

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Morrison, E. Rodriguez, Isaac, Kacal, P. King, Lozano, Reynolds, E. Thompson

0 nays

1 absent — K. King

WITNESSES: For — Walt Baum, AECT; AJ Louderback and T. Michael O'Connor, Sheriffs' Association of Texas; (*Registered, but did not testify*: John Fainter, AECT; Michael Chatron, AGC Texas Building Branch; Adrian Shelley, Air Alliance Houston; Michael Peterson, AT&T Texas; Seth Mitchell, Bexar County Commissioners Court; Lindsay Mullins, BNSF Railway; Skip Ogle, Cable; Henry Flores, CenturyLink, Inc.; Dennis Borel, Coalition of Texans with Disabilities; Leo Munoz, Comcast; Velma Cruz, Sprint; David Mintz, Texas Apartment Association; Scott Norman, Texas Association of Builders; Laura Nicholes, Texas Association of Counties; Steven Garza, Texas Association of Realtors; Jeff Burdett, Texas Cable Association; Eric Craven, Texas Electric Cooperatives; Joshua Houston, Texas Impact; Lindsey Miller, Texas Independent Producers and Royalty Owners Association; Patricia Gonzales, Texas Organizing Project; Ian Randolph, Texas Telephone Association; Todd Baxter, Time Warner Cable; Lon Craft, Texas Municipal Police Association; Mark Zion, Texas Public Power Association; Richard Lawson, Verizon)

Against — Jackie Powell, American Iron and Metals; (*Registered, but did not testify*: Daniel Greenberg)

On — Thomas Baker, The Recycling Council of Texas; (*Registered, but did not testify*: Randy Cubriel, Nucor; Texas Port Recycling; Jay Alexander, Texas Department of Public Safety)

DIGEST: CSHB 2187 would require metal recyclers to issue cash transaction cards

to sellers of metal. These cash transaction cards would have to be presented or verified whenever a person was paid in either cash or via a debit card for metal by a recycler. Cards would be non-transferrable and would have to include the name and address of the seller and the expiration date of the card, which could not be more than two years from the date the card was issued or renewed.

An application for a cash transaction card would have to include:

- the name, address, sex, and birth date of the applicant;
- the identification number from the applicant's personal identification document;
- a digital photograph taken at the time the applicant completed the application;
- a clear and legible thumbprint of the applicant; and
- the applicant's signature.

The metal recycler would be required to keep copies of each application for a cash transaction card and the cash transaction card itself received or issued in the past two years.

Unless a seller had been issued a cash transaction card, a recycler would only be able to purchase regulated material by check, money order, or direct deposit.

The Public Safety Commission could impose an administrative penalty of up to \$1,000 per day on a recycler violating these provisions, after notice and an opportunity for a hearing and an appeal process.

This bill would expand the definitions of copper or brass material to include certain cables, among other items, and would include "lead material" and certain lead batteries in the definition of "regulated material."

This bill would provide that the provisions for metal recyclers contained in Occupations Code, ch. 1956 did not apply to a telecommunications provider, a cable service provider, or a video service provider, in addition

to the other exceptions in current law.

The bill would expand from 12 to 15 the membership of the Department of Public Safety advisory committee on matters relating to the regulation of metal recycling entities. Specifically, it would add a representative from metal recycling companies, a sheriff of a county with a population of 500,000 or more, and a sheriff of a county with a population of less than 500,000. The bill would require the public safety director to appoint the three additional members as soon as practicable after the bill took effect.

The advisory committee would study the effects of the implementation of the cash transaction card during calendar year 2023 and report its findings to the Legislature before December 1, 2024.

The bill would take effect September 1, 2015, and would apply only to an offense or violation committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 2187 would create a clear financial paper trail that would make for easier, faster enforcement of metal theft. Because metal is hard to trace and can be easily recycled for cash, metal thieves have continued to be a problem for communities across Texas. This bill would help track cash transactions, allowing law enforcement to more easily locate the thieves.

The bill would devalue stolen metal and make it harder to turn into cash without connecting the seller's identity to the stolen property. This would reduce the incentive to steal, which could result in a demonstrable reduction in crime.

**OPPONENTS  
SAY:**

CSHB 2187 would not address the real barrier to stopping metal thieves. The state already has stringent reporting requirements, which include requiring a record of the car used to transport the metal (including a license plate number), a picture of the seller, and a picture of the items being sold. Some municipalities have adopted even stricter ordinances. The Department of Public Safety has no central metal theft division — it is auxiliary to other divisions within the department. Data exist to better enable enforcement, but the manpower to investigate metal theft does not.

This bill could offload a large regulatory burden onto metal recyclers,

making them responsible for administering the cash transaction card program. The administrative costs could drive some legitimate recyclers out of business, leaving only those who did not make the effort to comply.

**SUBJECT:** Consolidated internal auditing at health and human services agencies

**COMMITTEE:** Human Services — favorable, without amendment

**VOTE:** 8 ayes — Raymond, Rose, Keough, S. King, Klick, Peña, Price, Spitzer  
0 nays  
1 absent — Naishtat

**WITNESSES:** For — (*Registered, but did not testify*: Marina Hench, Texas Association for Home Care and Hospice; Christine Gendron, Texas Network of Youth Services)  
  
Against — (*Registered, but did not testify*: Carmen Cadena, Prolife4Life)  
  
On — (*Registered, but did not testify*: Elisa Hendricks, Kyle Janek, and Gary Jessee, Health and Human Services Commission; Sarah Kirkle and Karl Spock, Sunset Advisory Commission)

**BACKGROUND:** Government Code, ch. 2102, known as the Texas Internal Auditing Act, governs internal auditing at state agencies. Sec. 2102.005 requires a state agency to conduct a program of internal auditing that includes an annual audit plan. Sec. 531.0055 requires the executive commissioner of the Health and Human Services Commission (HHSC) to be responsible for the administrative supervision of the internal audit program for all health and human services agencies.

Sec. 2054.075(b) requires each state agency to provide that its information resources manager is part of the agency's executive management and reports directly to a person with a title functionally equivalent to executive director or deputy executive director.

HB 2292 by Wohlgemuth, enacted by the 78th Legislature in 2003, partially consolidated the state's health and human services agencies but did not give HHSC consistent authority in statute to oversee internal audits and information resources at all five health and human services

agencies. Some have called for HHSC's administrative authority regarding internal audits and information resources to be specified in statute.

**DIGEST:**

HB 2578 would require HHSC to operate an internal audit program required under Government Code, ch. 2102 for HHSC and each health and human services agency as a consolidated internal audit program. The bill would specify that the executive commissioner would act as the administrator of a state agency for all the health and human services agencies with respect to internal audits under Government Code, ch. 2102.

The bill would require the information resources manager of a health and human services agency to report directly to the executive commissioner or a deputy executive commissioner designated by the executive commissioner.

The bill would take effect September 1, 2015.

**SUBJECT:** Oversight by DSHS of hospitals that commit certain violations

**COMMITTEE:** Public Health — favorable, without amendment

**VOTE:** 10 ayes — Crownover, Naishtat, Blanco, Coleman, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

1 absent — Collier

**WITNESSES:** For — Lee Spiller, Citizens Commission on Human Rights; Anthony Thomas; (*Registered, but did not testify:* Dan Finch, Texas Medical Association; Yannis Banks, Texas NAACP)

Against — None

On — (*Registered, but did not testify:* Allison Hughes, Department of State Health Services)

**BACKGROUND:** Health and Safety Code, ch. 98 governs reporting of health care-associated infections and preventable adverse events. Chapter 98 requires health care facilities to report to the Department of State Health Services the occurrence of certain preventable adverse events involving patients at facilities.

**DIGEST:** HB 938 would direct the Department of State Health Services (DSHS) to require a hospital that had committed a violation that resulted in a potentially preventable adverse event reportable under Health and Safety Code, ch. 98 to develop and implement a plan to address the deficiencies that could have contributed to the preventable adverse event.

The bill would specify the following components that DSHS could require a hospital to include in its plan:

- staff training and education;
- staff supervision requirements;
- increased staffing requirements;

- increased reporting to DSHS; and
- a review and amendment of patient safety policies.

The bill would direct DSHS to carefully and frequently monitor the hospital's adherence to the plan for addressing deficiencies and to enforce compliance.

The bill would take effect September 1, 2015, and would apply to a potentially preventable adverse event that occurred on or after that date.

**SUBJECT:** Extending permitted times for the sale of fireworks

**COMMITTEE:** County Affairs — committee substitute recommended

**VOTE:** 6 ayes — Coleman, Burrows, Schubert, Spitzer, Stickland, Tinderholt  
2 nays — Farias, Romero  
1 absent — Wu

**WITNESSES:** For — Gayle Wilkerson, Texas Nationalist Movement; Chester Davis, and Shannon Brinkley, Texas Pyrotechnic Association; (*Registered, but did not testify*: Brian Fortney, Texas Nationalist Movement)  
  
Against — (*Registered, but did not testify*: Brian Hawthorne, Chambers County Sheriff's Office; Robert Bass, County Judges and Commissioners Association of Texas; Donna Warndorf, Harris County; Mike Montgomery, Harris County Fire Marshal's Office; Rick Thompson, Texas Association of Counties; Conrad John, Travis County Commissioners Court; Roy Callais)  
  
On — Joe Daughtry, Texas Firework Association

**BACKGROUND:** Occupations Code, sec. 2154.202 establishes certain requirements for the retail sale of fireworks, including permit requirements and specified times of sale.  
  
Local Government Code, sec. 352.051 establishes the duties of the Texas Forest Service (TFS) during fireworks season. The TFS makes its services available each day during the Fourth of July and December fireworks seasons. A county commissioners court may request a determination of drought conditions from the TFS. If the TFS determines the county has drought conditions on average, the commissioners court may order the restriction or prohibition of fireworks sales and use within the unincorporated areas of the county.

**DIGEST:** CSHB 1150 would authorize a county commissioners court to allow by

order retail fireworks permit holders to sell fireworks in the county to the public during the following additional time periods:

- from February 25 through March 1 (Texas Independence Day fireworks season);
- from April 16 through April 20 (San Jacinto Day fireworks season); and
- from the Wednesday before the last Monday in May through the last Sunday in May (Memorial Day fireworks season).

The bill would require the Texas Forest Service (TSF) to make its services available each day during these additional fireworks seasons.

If the Texas Forest Service determined drought conditions existed for a county and the commissioners court decided to adopt an order prohibiting or restricting the sale or use of fireworks, it would have to adopt the order before February 15, April 1, or May 15, as appropriate for the affected fireworks season.

This bill would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

CSHB 1150 would allow the sale of fireworks to be extended to permit the public recreational use of fireworks during certain holidays, including Texas Independence Day, San Jacinto Day, and Memorial Day. If drought conditions existed, the county commissioners court still would have the authority to adopt safety rules that prohibited or restricted the sale or use of fireworks to avoid increased fire hazards.

**OPPONENTS  
SAY:**

CSHB 1150 would provide additional days during which fireworks could be sold to the public, which could increase the use of fireworks and the risk of fire. While the commissioners court still could adopt firework restrictions, any type of firework ban is difficult to enforce and increases the use of county resources by increasing the need for more fire department staffing and equipment.

**SUBJECT:** Studying the availability of natural gas service in certain counties

**COMMITTEE:** Energy Resources — committee substitute recommended

**VOTE:** 9 ayes — Darby, Paddie, Anchia, Canales, Herrero, Keffer, Landgraf, Meyer, Wu

3 nays — Craddick, Dale, P. King

1 absent — Riddle

**WITNESSES:** For — (*Registered, but did not testify*: Lindsey Baker, City of Denton, Denton Municipal Electric; Lon Burnam, Public Citizen)

Against — (*Registered, but did not testify*: William Van Hoy, Texas Propane Gas Association)

**DIGEST:** CSHB 1125 would require the Texas Railroad Commission (RRC) to conduct a study on the availability of natural gas utility services in counties that met the description in the bill (El Paso County). The study would:

- identify each census-designated place with a population of at least 500 people that lacked natural gas utility service;
- consider the reasons for lack of availability of natural gas utility service in those places;
- estimate the cost of expanding availability of natural gas utility service in those places; and
- study methods for making natural gas utility service available throughout the county.

By November 30, 2016, the RRC would be required to provide a written report to the Legislature, the lieutenant governor, the speaker of the House, and the presiding officers of standing Senate and House committees with jurisdiction over the commission. The report would include the commission's findings and recommendations for changes in policies, rules, and statutes needed to provide for the extension of natural

gas utility service in a county that lacked it.

This bill would take effect September 1, 2015, and would expire December 1, 2016.

**SUPPORTERS  
SAY:**

CSHB 1125 would be an important step toward securing a cheaper and more dependable source of gas for an historically underserved community. The alternative to natural gas is propane gas, which is expensive and comparatively more dangerous. It costs local school districts and municipalities thousands of dollars to keep the heat on during the winter when propane costs spike and natural gas service is not in the area. But residents of these underserved communities, who often must pay exorbitant prices, are most affected.

By studying and publishing information about extending service to parts of El Paso County, this bill would raise awareness about this issue that greatly impacts several Texas communities.

**OPPONENTS  
SAY:**

CSHB 1125 is unnecessary and would not result in any actionable knowledge. Ultimately, the providers of natural gas utilities are private companies who already have conducted similar studies and determined that it is not yet commercially feasible to extend their business to the portions of El Paso County to be studied under the bill.

SUBJECT: Quarterly reporting for certain candidates, officeholders, committees

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Cook, Giddings, Farney, Geren, Harless, Huberty, Kuempel, Smithee

0 nays

4 absent — Craddick, Farrar, Oliveira, Sylvester Turner

WITNESSES: For — (*Registered, but did not testify*: Donnis Baggett, Texas Press Association)

Against — None

BACKGROUND: Under Election Code, ch. 254, candidates for statewide office and the Legislature, holders of statewide office, members of the Legislature, specific-purpose committees, and general purpose committees must file semiannual contribution and expenditure reports with the Texas Ethics Commission. The reports must be filed by July 15 and January 15.

DIGEST: CSHB 1532 would revise the requirements for reporting contributions and expenditures to the Texas Ethics Commission by candidates for statewide office, candidates for state representative and state senator, holders of statewide office, state representatives, state senators, general purpose committees, and certain specific-purpose committees. The new requirements would apply to specific-purpose committees supporting or opposing a candidate for statewide office or for the office of state representative or state senator, as well as those special-purpose committees assisting a holder of one of these offices.

Instead of reporting twice a year, reports would be required quarterly with the deadlines on April 15, July 15, October 15, and January 15.

The bill would take effect January 1, 2016.

SUBJECT: Regulation of insurance policy forms used for insuring certain large risks

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Frullo, G. Bonnen, Guerra, Meyer, Paul, Vo, Workman

0 nays

1 absent — Muñoz

1 present, not voting — Sheets

WITNESSES: For — (*Registered, but did not testify*: Michael Chatron, AGC Texas Building Branch; Jon Fisher, Associated Builders and Contractors of Texas; Jim Sewell, Gallagher Construction Services; Lee Loftis, Independent Insurance Agents of Texas; Perry Fowler, Texas Water Infrastructure Network (TxWIN))

Against — Paul Martin, National Association of Mutual Insurance Companies; (*Registered, but did not testify*: John Marlow, ACE Group; Thomas Ratliff, American Insurance Association; Lee Ann Alexander, Liberty Mutual Insurance; Joe Woods, Property Casualty Insurers Association of America; Bill Hammond, Texas Association of Business)

On — (*Registered, but did not testify*: Mark Worman, Texas Department of Insurance)

BACKGROUND: Insurance Code, sec. 2301.006 prohibits an insurer from delivering or issuing for delivery in the state a form for use in writing certain insurance unless the form has been filed with and approved by the commissioner of the Texas Department of Insurance (TDI).

Sec. 2301.007(a) allows the TDI commissioner to disapprove a filed form or to withdraw approval of a form if the form violates any law or contains a provision, title, or heading that is unjust or deceptive, encourages misrepresentation, or violates public policy. Sec. 2301.007(b) allows the TDI commissioner to withdraw approval of a form after notice and

hearing for good cause shown.

Sec. 2301.008 allows the TDI commissioner to adopt standard insurance policy forms, printed endorsement forms, and related forms other than insurance policy forms and printed endorsement forms, that an insurer may use instead of the insurer's own forms in writing certain insurance.

**DIGEST:**

HB 1132 would raise the threshold for an insured entity's total insured property values, total annual gross revenues, and total premiums for property insurance, general liability insurance, or multiperil insurance for certain policies to be exempt from requirements under Insurance Code, ch. 2301 related to insurance forms. The thresholds would be adjusted as follows:

- the total insured property value threshold would increase from \$5 million to \$10 million or more;
- the total annual gross revenues threshold would increase from \$10 million to \$20 million or more; and
- the threshold for property insurance, general liability insurance, and multiperil insurance each would increase to \$100,000 or more.

The bill would take effect September 1, 2015, and would apply only to an insurance policy that was delivered, issued for delivery, or renewed on or after that date.

**SUPPORTERS  
SAY:**

HB 1132 would make it easier for smaller contractors to get commercial general liability insurance coverage and to understand what they were buying. Contractors that need insurance with values above the current threshold in statute but below the higher threshold specified in HB 1132 often have issues with insurance carriers attaching manuscript endorsements to their policies that are written outside of a standardized form and that can more narrowly define the risks under the contractor's insurance contract. Manuscript endorsements are difficult for a smaller contractor to decipher without hiring an attorney, which creates a burden for these contractors. It also can result in contractors buying insurance that does not have the coverage they need.

HB 1132 would raise the threshold for which insurers would be required

to file their forms with the commissioner of the Texas Department of Insurance (TDI). Requiring this review would make it easier for smaller contractors to ensure that a manuscript endorsement had not narrowly redefined the risks under their insurance contract and would improve a contractor's ability to know what they were buying.

The bill would not impact high-end commercial clients because those clients' insurance policies would fall above the \$100,000 threshold set in the bill. For that reason, high-end commercial clients and their insurers would not be subject to the form requirements under HB 1132. High-end commercial clients have the legal resources to understand a manuscript endorsement and are large enough to successfully negotiate an unfavorable contract. The bill would not affect these clients but would allow smaller contractors to have the information they need to buy appropriate coverage.

**OPPONENTS  
SAY:**

HB 1132 would increase the time it took commercial insurance companies to bring products to market. The lower thresholds in existing statute are designed to require review of forms only for smaller policy holders, not for large, sophisticated policy holders that would fall under the newly raised threshold under HB 1132. The increased time for TDI to process forms under the new threshold created by the bill would make it harder for commercial insurers to bring their product to market and harder for high-end clients to find innovative products.